PUBLIC PROSECUTOR

v.

GOH YEONG HOCK & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[SELANGOR CRIMINAL TRIAL NO. 13 OF 1984]
29 AUGUST 1987

CRIMINAL LAW AND PROCEDURE: *Dangerous drugs - Trafficking - Section 39B Dangerous Drugs Act 1952 (Revised 1980) - Drugs found concealed in boxes in bottom of bags - 3 travelling bags handed to accused by 1st accused's employer - Accused denied ownership of bags and knowledge of contents of bags - Whether prima facie jointly in control and custody of 3 bags containing heroin - Presumption of possession of drugs and knowledge of drugs - Section 37(d) - Presumption of trafficking - Section 37(da)(i) - Prosecution case relied on rebuttable presumptions - Onus of proof on balance of probabilities.*

In this case, both the accused persons, husband and wife were charged for trafficking in dangerous drugs, to wit, heroin weighing 9736.19 grammes on 22 December 1983 at about 11.45 p.m. at the Subang International Airport, Petaling Jaya, Selangor, an offence under s. 39B of the Dangerous Drugs Act 1952 (Revised 1980)("the Act")

Held:

[1] At the end of the prosecution case, the Court found that there was evidence that 9736.19 grammes of heroin were found concealed in 3 bags albeit there was no evidence of overt acts on the part of both the accused indicating they knew that the bags contained the heroin.

[2] The evidence showed that the 1st accused had control and custody of two bags and the 2nd accused of one bag. Taking into consideration that they were seen checking the bags together and the production of a set of 3 keys by the 2nd accused which unlocked the padlocks of the 3 bags, both the accused on a *prima facie* basis were jointly in control and custody of the 3 bags containing heroin.

[3] Therefore the accused's possession of the drugs and their knowledge of the nature of the drugs could be presumed under s. 37(d) of the Act and the presumption arises under s. 37(da)(i) that they were trafficking. In the circumstances, both the accused were called upon to enter their defence.

[4] Having heard the defence evidence of both the accused and viewing the totality of the evidence, the Court was guided by the principle that since the prosecution was relying on rebuttable presumptions the onus of proof is one of balance of probabilities. On the balance of probabilities, the Court found that both the accused did not know the bags contained heroin and therefore acquitted and discharged them.

[Both accused acquitted and discharged]

Case referred to:
R. v. Taafee [1984] 2 WLR 326

Legislation referred to:
Dangerous Drugs Act 1952 (Revised 1980), ss. 37(d), (da)(i), 39B(1)(a), (2)(a)
Penal Code, s. 34

For the public prosecutor - Afizah Hanum, DPP
For the 1st accused - Siva Segara; M/s. Siva Segara & Co.
For the 2nd accused - Sidney Augustine; M/s. Augustine Negrin & Co.

JUDGMENT

KC Vohrah J:

The charge against the two accused reads as follows:

> That you on 22 December 1983 at about 11.45 p.m at the Subang International Airport in the District of Petaling Jaya in the State of Selangor did on your own behalves in furtherance of common intention traffic in dangerous drugs to wit heroin weighing 9736.19 grammes and that you have committed an offence under s. 39B(1)(a) of Dangerous Drugs Act 1952 (Revised 1980) read with s. 34 of the Penal Code and punishable under sub-section (2) of the said s. 39B of the same Act.

The case for the prosecution was that the two accused were seen to check in 3 bags, two by the first accused and one by the second accused, on 22 December 1983 at the Subang International Airport. They checked in at the check-in counter for a BA flight to London. Some police officers were stationed at the check-in counter and had earlier been on the look out for 3 persons (not the two accused) in a tour group. These 3 persons were subsequently arrested. A police officer, PW2, stationed at the counter, had detected these 3 persons. He noticed that the two accused had checked in bags similar in appearance to the bags checked in by these three persons. The bags of these three persons were found to contain heroin and PW2 was informed of this fact. Using his initiative PW2 detained the two accused who had checked in the similar looking bags. Subsequently the first accused picked 2 of the bags and the second accused picked one and the latter also produced keys to all these 3 bags; and heroin was found concealed in boxes which fitted the bottom of the bags. The concealed heroin weighed 9736.19 grammes.

The police officer at the check-in counter, PW2, was Assistant Superintendent of Police, Ariffin Bakar. He said that on 22 December 1983 at about 10 p.m. he stationed himself at the check-in counter for British Airways flight number BA 012 for London. He had information on 3 persons who were in a "Reliance" group tour taking the flight. These three persons were however not the two accused persons.

PW2 said that he instructed Jimmy Gwee, supposedly the tour leader in the group, to give him the "manifest name list" and passports of the passengers, which was done. PW2 ran through the name list and the passports and saw the three persons (not the two accused), on whom he had information, in the queue at the check-in counter and he handed back the list and the passport to Jimmy.

At 10.30 p.m. the checking in of the passengers of the "Reliance" tour group started and PW2, through his "radioset", informed Inspector Khalid waiting at the basement apron where the bags were being sent down via the conveyor belt and chute, to separate the baggage belonging to the "Reliance" tour group from the other baggage in respect of BA flight 012.

PW2 said he then saw the 3 suspects check in. A few minutes later the two accused checked in. PW2 noticed their bags. He said, "I saw the similarity of their bags with the ones checked in by the suspects earlier."

PW2 said that two bags were checked in by the first accused and one by the second accused. He saw yellow stickers on the two bags checked in by the first accused pasted on both sides of the bags (P15, P16 and P17) with the name of the first accused and on the bag checked in by the second accused yellow stickers on both sides of the bag with the name of the second accused. The bags had "Reliance" name tags with names written on them.

PW2 said he saw Jimmy (the tour leader) hand tickets to the MAS counter clerk Maykanathan (PW5) when the two accused checked in. PW5 stated he did not recollect seeing the two accused but that as each passenger came in he received the ticket from the tour leader. PW2 said he did not, however, pay attention to the two accused so he did not check the tickets. He saw PW5 put a destination tag on each of the bags and bags were placed on the conveyor belt. He saw PW5 hand over the tickets and boarding passes to the two accused after which the two accused left the counter.

PW2 waited till all the "Reliance" tour group passengers had checked in and at 11.30 he called Inspector Khalid (PW3) who was at the basement apron to come up. Inspector Khalid came up and was instructed to be stationed at the counter for further directions.

PW2 said that at about 11.45 Inspector Roslan (PW6) whom he had earlier instructed to detain the 3 suspects connected with the other bags contacted him to inform him that he had detained the 3 suspects and that he had found a whitish powder which he suspected to be heroin in their bags.

PW2 and a police party then went through Gate A to the International Departure Hall and took possession of the tickets and claim tags of these 3 suspects. Then he contacted Mr. Maykanathan (PW5) to collect the counter foil tickets of the 3 suspects. PW5 confirmed he handed tickets to PW2.

PW2 then went up with Inspector Khalid the escalator leading to the first floor, to Yazmin Restaurant, and he saw and approached the two accused seated at a table. There was another person there by the name of Tan Kok Beng. PW2 identified himself as a police officer and asked all three for their identity cards. He took possession of their identity cards and the passports of the two accused. The other person, Tan Kok Beng, told PW2 that "he was not going, he was only a sender."

PW2 handed Tan Kok Beng to Inspector Wahab (PW4) and he detained the two accused and instructed Inspector Khalid and Woman Corporal Maria to bring the two accused to the basement for further checking.

PW2 said that he then busied himself with normal duties and subsequently went down to the basement apron where he was informed by Inspector Khalid "that he had checked the bags" and had found whitish powder in the bags. PW2 then instructed Inspector Khalid to arrest both the accused and to take them to the Anti Narcotics Office.

PW3, ASP (previously Inspector) Khalid, corroborated the evidence of PW2 that PW2 had instructed him to be at the basement apron to separate the bags of the "Reliance" tour group from other bags (which he and 2 others did), that he was called up to the BA counter (where he went to). He corroborated the evidence of PW2 that they subsequently went up to Yazmin Restaurant where he (PW3) saw the two accused and a male Chinese at a table. PW3 said that PW2 requested the three for their identity cards after which the three were brought down the escalator; he was instructed together with Women Corporal Maria to take the two accused to the ground floor (basement apron) to take their baggage and to make a search; the other Chinese was handed to Inspector Wahab.

At the basement floor where the bags of the "Reliance" tour group had been set aside PW3 instructed the two accused to take their bags. The first accused took 2 blue coloured luggages and the second accused took one. PW3 then instructed them to bring the bags to an office of the Department of Civil Aviation which they did. PW3 noticed that all 3 bags were padlocked. The second accused took out a bunch of 3 keys (P25) from her handbag and handed them to PW3.

Using the keys PW3 unlocked all 3 padlocks of all 3 bags.

He then took out the contents of each bag and found each of the bags had a false bottom. He replaced the contents of each bag. He then padlocked all 3 bags. He subsequently met ASP Ariffin who handed him flight tickets issued in the names of the two accused. He then gave the baggage tag numbers of all 3 bags to ASP Ariffin.

PW3 subsequently brought the two accused and the 3 bags to the Anti Narcotics Office at the airport where he examined the bags. He took out the contents of one of the bags and drilled holes at the bottom of the bag into the bag and when he pulled out the drill there was whitish powder stuck to the drill. Gummed inside and at the bottom of the bag was a box covered with velvet material. He took out the box and tore out the velvet material and prised open part of the lid of the box and saw white powder in the box. PW3 went through the same procedures in respect of all 3 bags.

He then brought the accused and the 3 bags to the Anti Narcotics Office at Jalan Kia Peng, Kuala Lumpur where he made a detailed examination of the bags after which he handed the seized exhibits to Inspector Fajaruddin (PW6), the investigating officer of the case.

PW3 made markings on the outside of the fabric of each of the bags, P15, P16, and P17, on the destination tags attached to each of the bags, the yellow stickers gummed to the bags, the name tags attached to the handle of each bag, and the boxes recovered from the bottom of the bags. He emptied the contents of each of the three boxes in a plastic bag and made markings on each of the plastic bags.

Both defence counsel had through their cross-examination questioned as to whether the bags, the boxes, and the contents of the boxes could have been confused with the bags, boxes and contents seized from the 3 suspects who had been arrested earlier since the three suspects and their bags had been brought to the Jalan Kia Peng office together with the two accused and their bags, and all these bags were examined at the conference room table. I have to state that at the close of the prosecution case I was satisfied on a *prime facie* basis that there was no confusion in the exhibits in respect of the two accused and the exhibits in respect of the 3 suspects.

Inspector Fajaruddin, the investigation officer, (PW6) put his own markings on the exhibits to identify them and as he had to go to Kedah for a Court case he handed the same exhibits of the case to Inspector Zubir (PW7) to be handed to the Chemist (PW1). Before that he wrapped them up, made identification marks on the wrappers and sealed the packages with the police seal. The 3 boxes which were recovered from the bags (each of which came in two parts, the compartment and the lid) were wrapped separately into 3 packages and marked "A1 and A2", "B1 and B2" and "C1 and C2". The contents of the box "A1 and A2" were in a plastic bag which was marked A3, the contents of the box "B1 and B2" in B3 and "C1 and C2" in C3, all properly wrapped up together in one package, sealed and marked A3, B3 and C3 on this package. Inspector Zubir confirmed receiving exhibits from PW6 and sending them to the Government chemist.

The Government chemist acknowledged receiving the sealed packings from Inspector Zubir. His finding was that the powder in A3, B3 and C3 contained 3179, 3273 and 3283 grammes of heroin respectively. The chemist also analysed the boxes (each of which came in 2 parts, the lid and the compartment) and found in box A1 and A2 1.19 grammes of heroin. He found in the other two boxes B1 and B2 and C1 and C2 traces of heroin. There was therefore a total of 9736.19 grammes of heroin carried in the 3 bags P15, P16 and P17.

As was adverted to earlier there were many questions directed at the police witnesses to show that the exhibits seized in the case against both the accused could have been confused with the exhibits seized in respect of the case against the 3 suspects earlier mentioned. It was in evidence that there was a joint trial of three cases involving these suspects before Shaik Daud J (Selangor Criminal Trial Nos. 10, 11 and 12 of 1984). It was adduced in the instant case that the 3 bags seized in the said 3 cases were similar in appearance to the 3 bags in this case and that all the 6 bags were examined in the office at Kia Peng Road on one table. But it was also in evidence that the table was a U shaped table and the 3 bags in respect of the 3 other persons were placed and examined on the side of the U shaped table opposite to where the bags in the instant case were placed and examined. I was satisfied that on a *prima facie* basis there was no mix up of the exhibits at the table.

There was an unsatisfactory feature, however, regarding the safe keeping of the exhibits in this case. Inspector Fajaruddin (PW6) had stated that the exhibits in the case which he received from the chemist through Inspector Zubir had been kept together with the other exhibits in connection with the case in a safe and the safe was locked. He said he held the key to the safe and no one else had access to the safe. The implication was clear that all the time after his receipt of the exhibits from Inspector Zubir he had kept the exhibits in the safe until their production in Court and no one had access to them during the period they were in the safe. It was only disclosed to the Court under cross-examination that the safe was actually a steel cabinet and that it had been broken into on 5 February 1985, and also that money recovered from the two accused, Singapore $1220, RM470, French Francs 2000 and US $1548 had been stolen from the safe. It was also disclosed that the money from the other 3 cases kept in a different cabinet were also stolen, and that subsequently the contents of these two cabinets were transferred to a store. The defence complained that there could have been a mix up of the exhibits seized from the two accused and from the other 3 persons. However having regard to the evidence of Fajaruddin himself and of the storekeeper, Inspector Zubir (PW7), and his assistant, Inspector Kamaruddin (PW8), in regard to how the exhibits were brought into the store, how they were itemised and kept there, the security precautions taken to prevent unlawful access to the store, I was satisfied on a *prima facie* basis that there was no mix up of the exhibits which were produced before me with the exhibits seized in the other case though I deprecate the attempt to mislead the Court on the safekeeping of the exhibits.

At the end of the case of the prosecution there was evidence that 9736.19 grammes of heroin were found concealed in 3 bags. Whilst there was no evidence of overt acts on the part of the accused indicating they knew that the bags contained the heroin there was *prima facie* evidence that both of them were seen to check in the said bags and two bags had labels bearing the name of the first accused and one a label bearing the name of the second accused. When they were directed to pick their bags the first accused picked two bags and the second accused one bag and all three bags had heroin concealed in them. The evidence to my mind showed that the first accused had control and custody of two bags and the second accused of one bag but taking into consideration that they were both seen checking the bags together,

seen at the Yasmin Restaurant together and that the second accused produced a set of 3 keys which unlocked the padlocks of the 3 bags, they, on a *prima facie* basis, were jointly in control and custody of the 3 bags containing heroin; their possession of the drugs and their knowledge of the nature of the drugs could be presumed under s. 37(d) of the Dangerous Drugs Act 1952. And that they were trafficking in the drug could be presumed under s. 37(da)(i) of the Act. In the circumstances I called upon them to make their defence.

Defence

The first accused elected to give sworn evidence. His evidence was that while he had the three incriminating bags with him at the airport as alleged by the prosecution the bags were not his - they were meant to be brought to England as gifts for a friend of one Tan Kok Beng. Nor did he know that they had false bottoms or that heroin was concealed under the false bottoms. The second accused, his wife, who also elected to give sworn evidence admitted picking one of the bags but denied that it was hers. She also denied knowledge of what was concealed in it or in the other two bags.

In their evidence they pinpointed one man as having being pivotal in arranging what would have been their free trip to London and in their carrying the three incriminating bags. They named him as Ang Moh and identified him as Tan Kok Beng who had been arrested with them on 22 December 1983, at the airport. This person the uncontradicted evidence clearly showed was undergoing detention under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 from 23 February 1984 to 19 February 1986 and is presently undergoing detention under the Dangerous Drugs (Special Preventive Measures) Act 1985. One of the grounds of his detention is that he was an international trafficker in heroin and that on 22 December 1983 (i.e. the date on which the two accused and 3 other suspects were arrested) he was involved in 21.73 kilogram of heroin to be brought out of the country at Subang Airport, Kuala Lumpur.

Both the accused identified this Tan Kok Beng as Ang Moh and stated that he was the employer of the first accused in Singapore.

The first accused said that on 21 December 1983 in Singapore, in the morning, he received a call from this Ang Moh. Ang Moh who had been his employer for several years and who had given him a bonus of 5% on many jobs was also a person with whom he went to pubs. Ang Moh told him on the phone to wait in the house as he might bring good news to first accused. At about lunch time a person by the name of Ah Oh, a co-worker, phoned the first accused and asked him if he was interested in going for a free tour that night on condition he carried money, counterfeit US dollars, to the United Kingdom; the reward was RM5000 payable after he had brought the money to the U.K. The first accused said that he agreed and was told to consult his wife, the second accused, about it. Ah Oh promised to send someone with a bag for his clothings. The first accused said that at that time he received the call from Ah Oh the second accused was cutting vegetables for lunch. He then consulted his wife, and told her that his boss "Ang Moh" had offered a free tour for them. He said that she stated at first that the notice was too short but subsequently agreed to go for the free tour. The wife then left for her mother's place to see their infant daughter and to collect her clothes for the trip. Between 2 to 3 p.m. that day a person by the name of Ah Keong brought a big bag and a small one saying that Ah Oh had requested him to send the two bags to the first accused. He put some of his clothings in the bag as did the wife when she subsequently returned. She put cosmetic items in the small bag.

The first accused said that he was surprised when Ang Moh came to see him in the house in the evening and asked if they were ready. He asked Ang Moh whether he was the one who had asked Ah Oh to make the arrangements and Ang Moh replied that he had asked Ah Oh to telephone him to give him a surprise and that he, the first accused and the second accused had to take a flight to Kuala Lumpur first. The three then left for Changi Airport where Ang Moh brought the tickets for their flight to Kuala Lumpur. On arrival at Subang Airport the 3 then went to Plaza Hotel where Ang Moh checked them into the hotel.

In respect of the story of the first accused so far told by him the second accused's version is not different. She was not aware it was Ah Oh who had phoned her husband about the free trip. According to her the first accused had told her when she was cutting vegetables that it was an offer by "his boss" in reward for his hard work. She confirmed going to her mother's place - to tell her mother to look after their child and to take some clothings. When she came back she saw a big bag and a small one and the first accused told her that his boss had given them two bags. She packed her and her husband's clothes in the big bag and put cosmetic items in the smaller bag.

She said that at about 5 p.m. Ang Moh turned up and then they went to Changi Airport, took a flight to Kuala Lumpur, and went to a hotel.

We now shift to the events in Kuala Lumpur in the defence stories of both the accused.

The first accused said that the three of them went to Plaza Hotel in Kuala Lumpur where Ang Moh took his and his wife's passports and went to register their particulars in respect of checking into the hotel. He and his wife checked in room 610 but he did not know if Ang Moh stayed in the hotel; Ang Moh said he wanted to go and see his "girl friend".

The next day at about lunch time Ang Moh came to his room and brought along 3 travelling bags and helped him put clothings into the 3 bags; at that time the second accused, according to him, was watching T.V. Ang Moh took away the big bag brought from Singapore. Ang Moh told them he would be taking the flight the next day and he would meet them in England. He also told him that he was not ready with the money (the money which was supposed to have been brought to England.) He told them to go for lunch which they did in the hotel after which Ang Moh told him to wait in his room for his phone call.

The first accused said, in regard to the 3 bags which Ang Moh brought, that Ang Moh had said they were for his friend in England as gifts; they were bags with wheels and were lasting and he wanted them to be brought as used baggage so that the bags would not be taxed.

The first accused said that at 9 p.m. the same day Ang Moh telephoned him in his room and told him he was coming to his room which he did 5 to 10 minutes later. In the room Ang Moh said he was expecting a call. There was a call which Ang Moh received and Ang Moh told the first accused that the flight was at 11.30 p.m. and that they had to check out from the hotel. They checked out about 10 p.m. and according to the first accused Ang Moh asked him and his wife whether they had to take out any items from the bags and when they said there was nothing Ang Moh took out 3 padlocks from his trouser pocket and locked the bags. He then gave a set of the keys to the second accused. Then they left the hotel.

According to the first accused the hotel bills including those for the meals, all of which were taken in the hotel, were paid for by Ang Moh.

The second accused's evidence relating to the stay in Plaza Hotel is substantially similar to the first accused's evidence. She confirmed that Ang Moh brought the 3 bags. She said they appeared to be small. She was then watching T.V. and she heard Ang Moh tell the first accused to put their clothes in the bags - she heard that part of the conversation where Ang Moh requested the first accused to bring the bags for a friend in England. She confirmed they had lunch and that after that Ang Moh had said he would telephone her husband that night. In regard to the 3 bags she said she saw one with a sticker bearing her name but spelt as "Chen Kim Chew" whereas it should have been "Chien Kim Chew".

The second accused confirmed that Ang Moh phoned at about 9 that night and that he came to the room shortly after that. She said that Ang Moh asked if they wanted to take out any clothes from the bags otherwise he would lock the bags. He took out 3 padlocks from his right side trouser pocket, locked the padlocks and handed a set of 3 keys to her and told her to keep them in her sling bag so that the keys would not be lost.

I pause here to state that the person "Ang Moh" referred to by both the accused, according to them, is a person by the name of Tan Kok Beng presently detained in Muar as mentioned earlier. He clearly is not a figment of the imagination. From the evidence of the Plaza Hotel Manager, Bernard Khoo, DW3, and the receptionist, Christine Tan, on duty in the hotel on 21 December 1983, in relation to the relevant hotel registration cards D31A and D31B , and the hotel arrival and departure books, it is clear that Tan Kok Beng booked room 611 in the hotel for himself the same night. D31B and D31A show that Tan Kok Beng had paid RM500 as deposit for his room as well as room 610, the room of both the accused. The records show that the time both the accused checked in on 21 December 1983 and the time of departure on 22 December 1983 are about the times mentioned by both accused in their evidence. The registration card D31B shows also that the address given on the registration card relating to Tan Kok Beng is the same as that of both the accused as shown in D31A.

I now turn to the evidence of both the accused relating to what took place at Subang Airport on 22 December 1983.

The first accused said that on arrival at the airport he pushed a trolley with the 3 bags while the wife carried the small bag. The first accused said that Ang Moh was with him and he pushed the trolley to the screening machine. He put two bags and Ang Moh the other for screening after which they carried the bags to where the tour leader was and there he was introduced to the tour leader. Ang Moh then took his and his wife's passports and handed them to the tour leader and after they were inspected by the tour leader these were handed back with the air tickets and boarding passes. He said he checked in the bags and that his wife was standing by. Ang Moh told him to "pay the fee for overweight" - it was about RM30. He said he did it.

After checking in he, his wife and Ang Moh went "upstairs to a coffee House". At the coffee house Ang Moh told him that he (Ang Moh) would be going to England alone the next day. Ang Moh told him that the counterfeit money was not ready yet. The first accused then asked for money as expenses and Ang Moh gave an envelope to him which in turn he handed to his wife, the second accused, without counting the money. Ang Moh told them to take the 3 travelling bags to England "because the money was not ready yet." He then recounted the events where the police came up to them at the coffee house and their arrest and his evidence is substantially similar to the prosecution evidence. He admitted picking 3 bags.

The second accused's evidence on these aspects was substantially similar to that of the first accused. She stated that her husband, the first accused, pushed a trolley with 3 bags to where the conveyor belt was, that she had her and her husband's passports when her husband requested for them as Ang Moh had wanted them. She received them back and subsequently the three of them went to the coffee house for drinks. In the midst of the drink the police came and asked for their passports. The police brought them to a place and she was asked to pick up a bag and she picked the one with her name tag. At the request of the police she gave the set of keys to them without hesitation.

The defence story of both the accused is intended to show that they were innocent parties caught in a conspiracy by Tan Kok Beng alias Ang Moh to smuggle heroin overseas and that the scheme in which they were unwittingly involved was most probably part of a bigger one involving other attempts to take out 3 other bags of heroin that night. Their story was intended to show that they had no knowledge that heroin was concealed under the false bottoms.

That there was the arrest of 3 other persons that night is clear from the prosecution evidence as indeed it is clear from the evidence that the 3 bags seized in these 3 other cases were similar to P15, P16 and P17 of this case. There was ready admission from prosecution witnesses that all the bags had similar boxes covered with similar velvet material glued to the bottom and that the false bottoms were cleverly concealed and hard to make out except to an experienced officer. I think there can be no doubt that the plan to smuggle out the heroin in the other 3 cases in Selangor Criminal Trial Nos. 10, 11 and 12 of 1984 is part and parcel of a bigger scheme involving also the 3 bags seized from the first accused and the second accused. All 3 persons in the other cases (Selangor Criminal Trail Nos. 10, 11 and 12 of 1984) were acquitted by Shaik Daud J. I must state on record that I am however not influenced by the fact all the three were acquitted. I of course have to go by the evidence in this case. What is clear in the prosecution evidence adduced against the first and second accused is that, as I have said before, is that I have no doubt that the first and second accused were meant to be carriers in a scheme involving at least 3 other carriers to convey 6 bags containing heroin to the United Kingdom. The question is whether the first and second accused were unwitting players in a nefarious scheme by Tan Kok Beng or by Tan Kok Beng and others? Did they know the bags contained heroin?

The two accused said the three bags were given to them in the hotel on 22 December 1983 i.e. the 3 bags did not come from Singapore. Of that I am convinced; it would have been foolhardy for anybody to have brought in the 3 bags with the heroin and risk customs examination at Subang Airport. The bags were not really the bags of the first and second accused. That the three bags had cleverly concealed false bottoms except to an experienced eye is clear from the prosecution evidence. If the two accused had no prior knowledge that there were false bottoms it is probable they would not have known of the false bottoms by merely looking at them. As to what had happened to the bag brought by them from Singapore the evidence of the accused was that Tan Kok Beng took it away. That is believable.

The first accused stated that the he felt it odd that the bags were heavy. Should he have asked Ang Moh about it? What if he did not ask? Did this show he had guilty knowledge of the contents of the bag? I do not think this aspect of the evidence should be viewed in isolation.

This brings us to his professed relationship with his "boss", Ang Moh. In his evidence he stated, "He asked me to do this" - referring to the bringing of the 3 bags to Ang Moh's friend in England and he added, "I did not ask why." His evidence was that he was a

construction worker involved in building drains and doing renovation work and that Ang Moh was his main contract employer who even gave him bonuses on completion of his work with him. In other words he was beholden to him. The prosecution suggested that Ang Moh did not exist and that Tan Kok Beng was not Ang Moh. The first accused was cross-examined extensively on this especially as to why he did not mention that Ang Moh was also known as Tan Kok Beng in his cautioned statement. But when the second accused was cross-examined she was not cross-examined on this aspect and in fact she was cross-examined on the basis that Ang Moh was Tan Kok Beng. To my mind it is highly probable that Tan Kok Beng and Ang Moh are one and the same person and that he was indeed the employer of the first accused as the latter alleged. It has to be remembered that the address appearing on the registration card of Hotel Plaza (D31B) against Tan Kok Beng's address is a Singapore address, in fact the same address as that of both the accused shown in D31A. And the cautioned statement of the first accused made some 13 hours after his arrest categorically mentioned Ang Moh and PW1's evidence in Court but did not depart from that statement. Ang Moh the "boss" of the first accused to my mind existed and I have no reason to disbelieve that the first accused was beholden to him or they also had a special relationship where, being friends since school days, they went to pubs for drinks.

The first accused volunteered a mass of details in his evidence. He even volunteered the information that Ang Moh gave him and his wife a free tour of Europe in October. My impression was that the prosecution was unaware of this detail but it did go to show that the first accused felt that there was a special relationship between him and Ang Moh to the extent that Ang Moh could give him that free tour of Europe in October with the second accused (although they had to come back earlier as the first accused fell ill). But as was pointed out by counsel for defence this could well have been a dummy run; Tan Kok Beng could have been cultivating them to make use of them for a future drug run, to see if they asked too many questions.

In regard to the evidence relating to the events on 21 December 1983, as said earlier, the first accused went into details concerning Ang Moh, Ah Oh and Ah Keong and the free trip connected with the bringing of forged currency to the U.K. The cross-examination was directed to show that Ang Moh, Ah Oh and Ah Keong did not exist and that the events as related by the first accused did not take place. The fact remains that his story was substantially similar to the story given in his cautioned statement made shortly after his arrest. Neither the cross-examination of witnesses nor any other evidence show that Ang Moh, Ah Oh or Ah Keong did not exist. The story of taking a free trip at short notice was borne out by the wife's story who too went into details which sounded true.

It is not unlikely that a scheme hatched by Ang Moh or by Ang Moh and others to convey the heroin in this case and the other 3 cases would have meant planning several months ahead, singling out the likely carriers, planning the itinerary, booking the plane tickets in advance and in the meantime keeping the plans secret. Thus when the both accused mentioned that they were given short notice to go on a trip to England, just a few hours' notice, it is not improbable in the context of what had to be done in shrouds of secrecy. And the carrot for going at short notice? A free trip for two in order to bring counterfeit US currency to the U.K. As I have stated before the first accused's evidence did not depart from his cautioned statement which he gave about 13 hours after his arrest where details of what had transpired including the role of Ah Oh and Ah Keong were given and these details coincided with the details in his testimony. It would appear that Tan Kok Beng played on first accused's greed through Ah Oh as well. He was offered RM5000 after he conveyed the money to the U.K. And he fell for it. The first accused appeared to be a timid looking man.

Did Tan Kok Beng knowing his character take advantage of him and his greed? In the bigger scheme of drug trafficking it is not unlikely Tan Kok Beng could have taken advantage of his employee and friend and callously used him as an unwitting drug runner.

I am puzzled that when he was asked to pick the bags by the police the first accused did not hesitate - he said he picked up 3 bags though the evidence was that he picked up two - if indeed he knew the bags had drugs concealed. The DPP suggested that there was no hesitation because the false bottoms were cleverly concealed and the accused did not expect the police to discover the drugs. Could not the real reason be that the accused did not expect drugs to be concealed?

As for the second accused, PW2 said he saw her push a trolley with one bag and checking in the bag. Her evidence was that her husband pushed one trolley with all 3 bags. But I am prepared to accept her evidence as being more probable as a husband would more likely do what she said her husband did. But it was the prosection evidence that she gave the set of keys to the police. There was no suggestion that she hesitated giving the set of 3 keys after she had picked up a bag. She had recounted that Ang Moh (Tan Kok Beng) gave her the keys and it seems natural enough for a wife to carry the keys in her handbag. I do not find the handing over of the keys as indication of her knowledge of the drugs. I accept that the label bearing her name (spelt wrongly) was not written by her. She too gave a cautioned statement where she denied knowing anything about the drugs. Her story was substantially similar to her husband's in regard to the free trip offer of 21 December 1983 and the flight to Kuala Lumpur, the stay at Hotel Plaza, the bringing over of the bags by Tan Kok Beng, the padlocking of the bags, the airport incident.

Viewing the totality of the evidence I am guided by the principle that since the prosecution are relying on rebuttable presumptions the onus of proof is one of balance of probabilities. Are their stories, constituting a defence of no knowledge of the drugs in the bags, on a balance of probabilities sufficient to discharge the onus? As is stated in *R. v. Taafee* [1984] 2 WLR 326, per Lord Scarman at p. 329,

> "... the principle that a man must be judged upon the facts as he believes them to be is an accepted principle of the criminal law when the state of a man's mind and his knowledge are ingredients of the offence with which he is charged."

Clearly the defence story that Tan Kok Beng gave the two accused the 3 bags at Kuala Lumpur I have no reason to disbelieve. As I have stated clearly it is highly improbable the bags came from Singapore. And from the totality of the evidence the state of mind of the back-boneless construction worker was that he and his wife were bringing the 3 bags on behalf of his good boss Tan Kok Beng as gift from the latter to his friend in England because if they were special gifts and because if they carried these bags with them to England no tax would be payable on them. On a balance of probabilities, to my mind, the two accused did not know the bags contained heroin.

They are therefore acquitted and discharged.

Notwithstanding that this case has not resulted in a conviction I think I must place on record that I wish to commend ASP Ariffin Bakar for his vigilance and initiative in detecting the similarity of the 3 bags seized in this case with 3 other bags on which he had information and for having made the seizure of the heroin.

Also found at [1988] 1 CLJ 185